

Internal Revenue Service, Treasury

§ 1.1402(c)-5

receives fees for service as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis may elect, if the performance of the service for which such fees are received constitutes a trade or business pursuant to the provisions of subparagraph (1) of this paragraph, to have such performance of service treated as excluded from the term “trade or business” for the purpose of the tax on self-employment income, pursuant to the provisions of section 122(c)(2) of the Social Security Amendments of 1967 (as quoted in § 1.1402(c)). Such election shall not be limited to service to which the fees received in 1968 are attributable but must also be applicable to service (if any) in subsequent years which, except for the election, would constitute a trade or business pursuant to the provisions of subparagraph (1) of this paragraph. An election made pursuant to the provisions of this subparagraph is irrevocable.

(ii) The election referred to in subdivision (i) of this subparagraph shall be made by filing a certificate of election of exemption (Form 4415) on or before the due date of the income tax return (see section 6072), including any extension thereof (see section 6081), for the taxable year of the individual making the election which begins in 1968. The certificate of election of exemption shall be filed with an internal revenue office in accordance with the instructions on the certificate.

(g) *Individuals engaged in fishing.* For taxable years ending after December 31, 1954, service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life (hereinafter “fish”) constitutes a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1 if the service is excepted from the definition of employment by section 3121(b)(20) and § 31.3121(b)(20)-1(a). However, the preceding sentence does not apply to services performed after December 31, 1954, and before October 4, 1976, on a boat engaged in catching fish if the owner or operator of the boat treated

the individual as an employee in the manner described in § 31.3121(b)(20)-1(b).

[T.D. 6691, 28 FR 12796, Dec. 3, 1963, as amended by T.D. 6978, 33 FR 15937, Oct. 30, 1968; T.D. 7333, 39 FR 44448, Dec. 24, 1974; T.D. 7691, 45 FR 24129, Apr. 9, 1980; T.D. 7716, 45 FR 57123, Aug. 27, 1980]

§ 1.1402(c)-4 Individuals under Railroad Retirement System.

The performance of service by an individual as an employee or employee representative as defined in section 3231(b) and (c), respectively (see §§ 31.3231(b)-1 and 31.3231(c)-1 of Part 31 of this chapter (Employment Tax Regulations)), that is, an individual covered under the railroad retirement system, does not constitute a trade or business.

§ 1.1402(c)-5 Ministers and members of religious orders.

(a) *In general*—(1) *Taxable years ending before 1968.* For taxable years ending before 1955, a duly ordained, commissioned, or licensed minister of a church or a member of a religious order is not engaged in carrying on a trade or business with respect to service performed by him in the exercise of his ministry or in the exercise of duties required by such order. However, for taxable years ending after 1954 and before 1968, any individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) may elect, as provided in § 1.1402(e)(1)-1, to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to service performed by him in his capacity as such a minister or member. If such a minister or a member of a religious order makes an election pursuant to § 1.1402(e)(1)-1 he is, with respect to service performed by him in such capacity, engaged in carrying on a trade or business for each taxable year to which the election is effective. An election by a minister or member of a religious order has no application to service performed by such minister or member which is not in the